

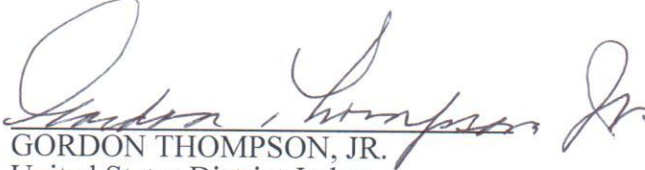
On June 17, 2013, the Supreme Court decided the Alleyne case. This case held that any fact which increases the mandatory minimum sentence for a crime is an element of the crime and not a sentencing factor. As an element, it must be submitted to a jury and proven beyond a reasonable doubt. The Alleyne case overruled Harris v. United States, 536 U.S. 545 (2002).

1 Without more, Mr. Wilson, who was tried, convicted and sentenced in 1992, simply states
2 that the indictment in his case was deficient because it did not state all the required elements and
3 those elements were not proven beyond a reasonable doubt as required under Alleyne. He further
4 states that his current Motion is “not an attempt to circumvent” the requirement of a certificate of
5 appealability for a second or successive §2255 Motion. He states that his present Motion is simply
6 “intended to preserve the Alleyne” claim. However, under Dodd v. United States, 125 S.Ct. 2478
7 (2005), a second or successive §2255 motion will be time barred unless, in the rare case, the
8 Supreme Court announces the new constitutional rule and makes it retroactive within one year. In
9 this case, the Alleyne case was not made retroactive within one year. Hence, if Mr. Wilson filed
10 a second § 2255 motion based on the Alleyne case, it would time barred. Accordingly,

11 **IT IS ORDERED** that Mr. Wilson’s Motion is **DENIED**.

12 **IT IS SO ORDERED.**

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15 5/21/15
16 date

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GORDON THOMPSON, JR.
United States District Judge

cc: All parties